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* **IN THE HIGH COURT OF DELHI**

\+ OMP No.119 of 2005

% Date of decision: 22.05.2006

National Highways Authority of India ...PETITIONER
Through: Mr. Rajiv Nayar, Sr. Adv. With
Mr. Kishan Kumar, Advocate.

VERSUS

M/s. Maharia - Raj (JV) & Ors. ... RESPONDENTS
Through: Mr. R.P.Bhatt, Sr. Adv. With
Mr. Rajesh Sinha and
Ms. Tanuja Sheel, Advs.
for respondent Nos. 1 & 2.
Mr. B.S. Mathur and
Mr. R. Doraiswami,
Advocate for respondent No.3.
Mr. D.K. Gupta, Adv. for the
applicant in I.A. No.5414/05.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J. *(ORAL)*

+ OMP.No.119/2005 & IA.Nos.3113, 3386/2006

1. Learned senior counsel for the petitioner states that the petitioner has addressed a communication in pursuance to the Order dated 1.12.2005 calling upon the Indian Road Congress to nominate the presiding arbitrator.
2. During the course of the hearing endeavour was made to sort out the issues and the matter was pending consideration

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on the issue of constitution of the arbitral tribunal itself for now almost six months and since arbitration is to be expeditious remedy, the very purpose of such remedy was being defeated.

3. Learned counsel for the parties jointly state that whole issue can be sorted out by having a panel of three arbitrators, with one arbitrator as nominated by each of the parties and the presiding arbitrator to be appointed by this Court with the joint consent of the learned counsel for the parties. It may be noticed that as on date the petitioner has nominated Mr.L.R.Gupta, Director General Works, CPWD (Retd.) while respondent has nominated Justice K.S.Gupta (Retd.). Justice K.S.Gupta was nominated in place of Justice A.K.Srivastava (Retd.), who expressed his inability to act as an arbitrator.

4. Learned counsel for the parties propose that Justice Arun Kumar (Retd. Judge of the Supreme Court), 10, Krishna Menon Marg, New Delhi - 110 001 (Phone : 2301-2175) be appointed as the presiding arbitrator and arbitral tribunal be constituted accordingly.

5. The constitution of the presiding arbitrator and arbitral tribunal as proposed by learned counsel for the parties is accepted by this Court and the said tribunal shall proceed to enter upon reference and determine the dispute between the parties. Ordered accordingly. The constitution of the

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tribunal be Justice Arun Kumar (Retd.) as the presiding arbitrator, Mr.L.R.Gupta and Justice K.S.Gupta (Retd.) as the two other members of the arbitral tribunal. The fee shall be fixed by the tribunal itself.

6. It is further agreed that the interim order dated 15.4.2005 shall continue to operate till such time as any of the parties may move the arbitrators for variation and liberty is granted for the said purpose to the learned counsel for the parties.

7. It is also agreed that the goods over which the petitioner has exercised lien may be shifted to one location at Main Camp Rai, near Haryana Sheet Glass Factory under the supervision of one representative of each of the petitioner and the respondent after making inventory for the same. The same is without prejudice to the rights and contentions of the respondent and the role of the representative of the respondent is confined to making inventory and supervising at the time of shifting. It is agreed that the shifting will be carried out on 12.6.2006 (Friday) commencing 10:00 am.

8. The petition and the applications are disposed of accordingly.

9. DASTI to learned counsel for the parties for service on the arbitrators.

+ **IA No. 5414/2005 IN OMP No. 119/2005**

10. This application has been filed by the applicant seeking release of six vehicles, i.e., COMET TIPPER ALCO bearing Nos.

HR-69-1001, HR-69-1003, HR-69-1004, HR-69-1005, HR-69-1006 & HR-69-1007, which stand transferred to the applicant. The petitioner had given equipment and machinery advance to respondent No. 2. Respondent No. 2 apparently used part of the advance for purchase of 15 tippers. Respondent No. 2 availed of finance from M/s. Ashok Leyland Finance Leasing Pvt. Ltd. Respondent No. 2 sold these vehicles to the applicant, who cleared the dues of M/s. Ashok Leyland Finance Leasing Pvt. Ltd. and has got the vehicles registered in its name by the Registering Authority.

11. In terms of the interim order dated 15.04.2005, a restraint order was passed in respect of plant, equipment, machinery and works against the respondents.

12. The question which, thus, remains to be considered in the present application is whether the aforesaid six tippers transferred to the applicant will continue to be covered by this interim order. It must be appreciated that the vehicles will be governed by the Motor Vehicles Act, 1988 and the Rules framed thereunder. The arrangement between the petitioner and respondent No. 2 did not require any lien to be registered with the Registering Authority nor was any such lien so registered. In fact, the position which emerges is that respondent No. 2 utilised the financing through M/s. Ashok Leyland Finance Leasing Pvt. Ltd. for these six tippers. There is, thus, doubt as to how much funds advanced by the

petitioner were at all put to use by respondent No. 2 insofar as the purchase of these tippers are concerned. The only lien entered in the certificate of registration was of M/s. Ashok Leyland Finance Leasing Pvt. Ltd., which was got cancelled by the applicant after clearing dues of the finance company and making payment to respondent No. 2. The vehicles stand registered in the name of the applicant.

13. In view of the aforesaid position, I am of the considered view that insofar as the aforesaid six tippers are concerned, the same are liable to be released to the applicant and the interim order dated 15.04.2005 cannot operate in respect thereof. The vehicles be released by the petitioner to the applicant within a week from today.

14. The application stands disposed of.

SANJAY KISHAN KAUL, J.

May 22, 2006
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